

**IN THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF MINNESOTA**

*IN RE PORK ANTITRUST LITIGATION*

This Document Relates To:  
*All Actions, including:*

*Commonwealth of Puerto Rico v. Agri  
Stats Inc., et al.*

*Winn-Dixie Stores, et a. v. Agri Stats Inc.,  
et al.*

No. 0:18-cv-01776 (JRT-HB)

**JOINT LETTER PROPOSAL  
REGARDING BRIEFING  
DEADLINES AND WORD  
LIMITS**

Dear Judge Bowbeer:

Pursuant to the Court's October 24, 2019 Order (Dkt. 389), the parties have met and conferred regarding a common briefing schedule and word limits for the motions to dismiss the amended complaints filed on November 6, 2019 by the putative class plaintiffs (Dkts. 390, 392, and 399), and the amended complaints filed on December 6, 2019 by the Commonwealth of Puerto Rico in Case No. 19-cv-02723 (Dkt. 15) and Winn-Dixie/Bi-Lo in Case No. 19-cv-1578 (Dkt. 81). Whereas the parties were able to reach agreement on a common briefing schedule (*see* below), they were unable to reach agreement on word limits and thus set forth their competing proposals and positions below:

Agreed Proposed Briefing Schedule

All parties propose the following schedule for briefing on the motions to dismiss. This proposed schedule would have the motions fully briefed by March 13, 2020, as ordered by the Court. *See* Dkt. 389 at 2:

- Defendants' opening briefs: Due January 15, 2020;
- Plaintiffs' opposition briefs: Due February 21, 2020;
- Defendants' reply briefs: Due March 13, 2020.

Proposed Word Limits

As with the previous motions to dismiss, certain of the parties propose to consolidate their arguments into joint briefs that would address the federal law claims, non-federal law claims, and shorter individual briefs that would address matters unique to each defendant. As detailed below, Defendants believe that the motions to dismiss (and responses thereto) should be consolidated as to all five cases given the substantial overlap in the allegations in each of the five cases. The Class Plaintiffs agree that the arguments should be

consolidated as to the three class cases, but that the *Winn-Dixie* and *Puerto Rico* motions to dismiss should be briefed separately.

Counsel for *Puerto Rico* take no position on the consolidation of arguments with respect to the three class cases, and will endeavor to meet and confer with Class Plaintiffs to jointly address any arguments that are jointly applicable to the Class Complaints and *Puerto Rico*, but agrees that *Puerto Rico* should have the opportunity to separately brief any unique argument addressing *Puerto Rico*'s Amended Complaint on grounds not applicable to the Class Complaints.

Finally, *Winn-Dixie* takes no position on the consolidation of arguments with respect to the three class cases, and will endeavor with Class Plaintiffs to jointly address any arguments that are jointly applicable to the Class Complaints and *Winn-Dixie*. However, *Winn-Dixie* takes the position that it should have the opportunity to separately brief any arguments addressing *Winn-Dixie*'s Amended Complaint.

### ***Defendants' Position:***

Given the substantial overlap in the allegations as and between the three class complaints and the two individual follow-on complaints—*Winn-Dixie* and *Puerto Rico*—Defendants believe that it would be inefficient for the Court and prejudicial to Defendants for Defendants to be required to respond separately to the various complaints. This is not a motion for class certification such that the Class Plaintiffs have particularly unique arguments as to the putative classes. Rather, the anticipated motions are ones that will attack the sufficiency of plaintiffs' allegations of conspiracy—all of which are common to all of the plaintiffs in the five cases. To the extent that the Court does not order consolidated briefing as to all of the complaints, Defendants submit that the word counts proposed below should govern and plaintiffs be required to divide them amongst themselves as they deem appropriate.

- *Joint Briefs (Federal Claims)*

Defendants would have up to 27,000 words to use in total for their opening and reply briefs directed at the federal claims in all five of the amended complaints. Plaintiffs collectively would have up to 27,000 words to use in total for their single, joint opposition brief.

- *Joint Briefs (Non-Federal Claims)*

For the joint motion to dismiss directed at the two indirect-purchaser class cases and the non-federal claims in the *Puerto Rico* amended complaint, Defendants would be permitted to use up to 17,000 words in total for their opening and reply briefs, and Plaintiffs would be permitted to use up to 17,000 words in their single, joint response brief.

- *Individual Briefs*

For any motions to dismiss that will be filed by individual Defendants, each moving Defendant would be permitted to use up to 4,000 words in total for its opening and reply briefs, and the Plaintiffs collectively would be permitted to use up to 4,000 words in response to each, filed either in single, joint response briefs, or in a consolidated joint response brief.

***Class Plaintiffs' Position:***

Class plaintiffs propose for the briefing regarding the class complaints, the same approach and word limits that was used in the prior briefing.

For the joint motion to dismiss directed at all three class complaints, Defendants have up to 27,000 words to use in total for their opening and reply briefs. Class Plaintiffs have up to 27,000 words to use in total for their single, joint opposition brief.

For the joint motion to dismiss directed solely at the two indirect-purchaser cases, Defendants would be permitted to use up to 15,000 words in total for their opening and reply briefs, and the Class Plaintiffs would be permitted to use up to 15,000 words in their single, joint response brief.

For the motions to dismiss that will be filed by individual Defendants, each moving Defendant would be permitted to use up to 3,000 words in total for its opening and reply briefs, and the Class Plaintiffs would be permitted to use up to 3,000 words in response to each, filed either in single, joint response briefs or in a consolidated joint response brief.

Class Plaintiffs have already taken significant steps to minimize duplicative burden by proposing a consolidated joint brief for the class complaints and a consolidated joint brief regarding the claims of the indirect purchaser classes. Class Plaintiffs and DAP plaintiffs have filed separate complaints, and represent different clients and interests in this litigation. Class plaintiffs are willing to confer with DAP counsel to avoid overlap and repetition in their separate responses to defendants' motions to the extent possible. Class Plaintiffs would also be willing meet and confer with DAP counsel to discuss whether DAP counsel can use some portion of Class Plaintiffs' 27,000 word limit for their own separate brief.

Class plaintiffs, however, would be materially prejudiced in our ability to fully present arguments on behalf of the classes by being forced to consolidate our arguments with these separate plaintiffs in separate actions. Therefore, Class plaintiffs respectfully request that the Court not consolidate briefing of the class complaints with briefing of the *Winn-Dixie* and *Puerto Rico* complaints.

**Puerto Rico's Position:**

There are undoubtedly factual similarities between the Commonwealth of Puerto Rico's Amended Complaint and the other operative complaints filed in this action, and Puerto Rico will endeavor to work with Class Plaintiffs to jointly address any arguments that are applicable to both the Class Complaints and Puerto Rico for the sake of efficiency. However, Puerto Rico's Amended Complaint is unique and stands on its own. Puerto Rico is the only sovereign entity in these consolidated proceedings, and seeks, *inter alia*, unique relief based on its sovereign status and makes separate and distinct claims than those made by the Class Complaints. No Defendant previously moved to dismiss Puerto Rico's Complaint, and Puerto Rico cannot anticipate what arguments Defendants will make in that regard, if any.

However, and to the extent any Defendant does move to dismiss Puerto Rico's Amended Complaint based on arguments applicable only to Puerto Rico's Amended Complaint and not the Class Complaints, Puerto Rico should be permitted to brief and oppose any such arguments separately. Puerto Rico has separate and distinct interests and is represented by separate counsel, and would be prejudiced if forced to brief Puerto Rico-specific arguments jointly with Winn-Dixie and/or the pending Class Plaintiffs.

Therefore, and for the foregoing reasons, Puerto Rico should be permitted to separately brief and oppose any arguments addressing Puerto Rico's Amended Complaint on grounds not applicable to the Class Complaints.

**Winn-Dixie's Position:**

While there may be factual similarities between Winn-Dixie's Amended Complaint and the other operative complaints filed in this action, Winn-Dixie's Amended Complaint is unique and stands on its own because it is the only Direct Action Plaintiff or Opt Out Plaintiff, and its case is not brought as a class action. Moreover, No Defendant previously moved to dismiss Winn-Dixie's Complaint, and Winn-Dixie should not be put in the position of speculating as to all of the arguments Defendants directed to its Amended Complaint.

Thus, to the extent any Defendant does move to dismiss Winn-Dixie's Amended Complaint, Winn-Dixie should be permitted to brief and oppose any such arguments separately. Winn-Dixie has its own issues and is represented by separate counsel, and would be prejudiced if forced to brief Winn-Dixie specific arguments jointly Puerto Rico and/or the pending Class Plaintiffs. Therefore, and for the foregoing reasons, Winn-Dixie should be permitted to separately brief and oppose any arguments addressing its Amended Complaint.

Dated: December 13, 2019

Respectfully submitted,

/s/ Bobby Pouya

Bruce L. Simon  
PEARSON, SIMON & WARSHAW, LLP  
44 Montgomery Street, Suite 2450  
San Francisco, CA 94104  
Telephone: (415) 433-9000  
Facsimile: (415) 433-9008  
bsimon@pswlaw.com

Clifford H. Pearson  
Daniel L. Warshaw  
Bobby Pouya  
Michael H. Pearson  
PEARSON SIMON & WARSHAW, LLP  
15165 Ventura Boulevard, Suite 400  
Sherman Oaks, CA 92403  
Telephone: (818) 788-8300  
Facsimile: (818) 788-8104  
cpearson@pswlaw.com  
dwarshaw@pswlaw.com  
bpouya@pswlaw.com  
mpearson@pswlaw.com

Melissa S. Weiner (MN #0387900)  
Joseph C. Bourne (MN #0389922)  
PEARSON, SIMON & WARSHAW, LLP  
800 LaSalle Avenue, Suite 2150  
Minneapolis, MN 55402  
Telephone: (612) 389-0600  
Facsimile: (612) 389-0610  
mweiner@pswlaw.com  
jbourne@pswlaw.com

W. Joseph Bruckner (MN #0147758)  
Elizabeth R. Odette (MN #0340698)  
Brian D. Clark (MN #0390069) Simeon  
A. Morbey (MN #0391338)  
Arielle S. Wagner (MN #0398332)  
Stephanie A. Chen (MN #0400032)

/s/ Shana E. Scarlett

Steve W. Berman  
Breanna Van Engelen  
HAGENS BERMAN SOBOL SHAPIRO  
LLP  
1301 2nd Avenue, Suite 2000  
Seattle, WA 98101  
Telephone: (206) 623-7292  
Facsimile: (206) 623-0594  
steve@hbsslaw.com  
breannav@hbsslaw.com

Shana E. Scarlett  
Rio S. Pierce  
HAGENS BERMAN SOBOL SHAPIRO  
LLP  
715 Hearst Avenue, Suite 202  
Berkeley, CA 94710  
Telephone: (510) 725-3000  
Facsimile: (510) 725-3001  
shanas@hbsslaw.com  
riop@hbsslaw.com

Daniel E. Gustafson (#202241)  
Daniel C. Hedlund (#258337)  
Michelle J. Looby (#388166)  
Britany N. Resch (#0397656)  
GUSTAFSON GLUEK PLLC  
120 South 6th Street, Suite 2600  
Minneapolis, MN 55402  
Telephone: (612) 333-8844  
Facsimile: (612) 339-6622  
dgustafson@gustafsongluek.com  
dhedlund@gustafsongluek.com  
mlooby@gustafsongluek.com  
bresch@gustafsongluek.com

*Co-Lead Counsel for Consumer Indirect  
Purchaser Plaintiffs*

LOCKRIDGE GRINDAL NAUEN  
P.L.L.P.  
100 Washington Avenue South, Suite  
2200  
Minneapolis, MN 55401  
Telephone: (612) 339-6900  
Facsimile: (612) 339-0981  
wjbruckner@locklaw.com  
erodette@locklaw.com  
bdclark@locklaw.com  
samorbey@locklaw.com  
aswagner@locklaw.com  
sachen@locklaw.com

*Co-Lead Class Counsel for Direct  
Purchaser Plaintiffs*

/s/ Blaine Finley

Shawn M. Raiter (MN# 240424)  
LARSON • KING, LLP  
2800 Wells Fargo Place  
30 East Seventh Street  
St. Paul, MN 55101  
Telephone: (651) 312-6518  
sraiter@larsonking.com

Jonathan W. Cuneo  
Joel Davidow  
Blaine Finley  
Yifei “Evelyn” Li  
CUNEO GILBERT & LADUCA, LLP  
4725 Wisconsin Avenue NW, Suite 200  
Washington, DC 20016  
Telephone: (202) 789-3960  
jonc@cuneolaw.com  
joel@cuneolaw.com  
bfinley@cuneolaw.com  
evelyn@cunelolaw.com

*Co-Lead Counsel for Commercial and  
Institutional Indirect Purchaser Plaintiffs*

/s/ Patrick J. Ahern

Patrick J. Ahern (admitted *pro hac vice*)  
Theodore B. Bell (admitted *pro hac vice*)  
AHERN AND ASSOCIATES, P.C.  
Willoughby Tower  
8 South Michigan Avenue, Suite 3600  
Chicago, Illinois 60603  
Ph: (312) 404-3760  
patrick.ahern@ahernandassociatespc.com  
theo.bell@ahernandassociatespc.com

Patrick J. Lee-O-Halloran (#269074)  
THOMPSON TARASEK LEE-  
O’HALLORAN PLLC  
7101 York Avenue South, Suite 225  
Edina, MN 55435  
Telephone: (612) 568-0132  
Fax: (612) 564-6976  
patrick@ttlolaw.com

*Attorneys for Plaintiffs Winn-Dixie Stores,  
Inc. and Bi-Lo Holdings, LLC*



Dennise Longo Quiñones  
Attorney General

Johan M. Rosa Rodríguez  
PR Bar No. 16819  
Assistant Attorney General  
Antitrust Division  
Puerto Rico Department of Justice  
P.O. Box 9020192  
San Juan, Puerto Rico 00902-0192  
Tel: (787) 721-2900, ext. 2600, 2601  
Fax: (787) 721-3223  
jorosa@justicia.pr.gov

/s/ Peter B. Schneider  
Todd M. Schneider  
Kyle G. Bates (USDCPR-306412)  
SCHNEIDER WALLACE COTTRELL  
KONECKY WOTKYNS LLP  
2000 Powell St., Suite 1400  
Emeryville, California 94608  
Telephone: (415) 421-7100  
Facsimile: (415) 421-7105  
tschneider@schneiderwallace.com  
kbates@schneiderwallace.com

Peter B. Schneider  
SCHNEIDER WALLACE COTTRELL  
KONECKY WOTKYNS LLP  
3700 Buffalo Speedway, Suite 300  
Houston, Texas 77098  
Telephone: (713) 338-2560  
Facsimile: (415) 421-7105  
pschneider@schneiderwallace.com

*Counsel for the Commonwealth of Puerto Rico*

/s/ Jaime Stilson  
Jaime Stilson (#0392913)  
DORSEY & WHITNEY LLP  
50 South Sixth Street, Suite 1500  
Minneapolis, MN 55402-1498  
(612) 492-6746

/s/ Mark L. Johnson  
Mark L. Johnson (#0345520)  
Virginia R. McCalmont (#0399496)  
GREENE ESPEL PLLP  
222 South Ninth Street, Suite 2200  
Minneapolis, MN 55402  
(612) 373-0830  
mjohnson@greeneespel.com  
bkrueger@greeneespel.com  
vmccalmont@greeneespel.com

Daniel Laytin, P.C. (pro hac vice)  
Christa Cottrell, P.C. (pro hac vice)  
Christina Briesacher (pro hac vice)  
Christina Sharkey (pro hac vice)  
KIRKLAND & ELLIS LLP  
300 North LaSalle  
Chicago, IL 60654  
(312) 861-2000  
daniel.laytin@kirkland.com  
christa.cottrell@kirkland.com  
christina.briesacher@kirkland.com  
christina.sharkey@kirkland.com

*Counsel for Clemens Food Group, LLC  
and The Clemens Family Corporation*

/s/ Richard A. Duncan  
Richard A. Duncan (#0192983)  
Aaron D. Van Oort (#0315539)  
Craig S. Coleman (#0325491)  
Emily E. Chow (#0388239)  
Isaac B. Hall (#0395398)  
Bryan K. Washburn (#0397733)  
FAEGRE BAKER DANIELS LLP

stilson.jaime@dorsey.com

Britt M. Miller (*pro hac vice*)  
Robert E. Entwisle (*pro hac vice*)  
MAYER BROWN LLP  
71 South Wacker Drive  
Chicago, IL 60606-4637  
(312) 782-0600  
bmiller@mayerbrown.com  
rentwisle@mayerbrown.com

William H. Stallings (*pro hac vice*)  
MAYER BROWN LLP  
1999 K Street, N.W.  
Washington, D.C. 20006-1101  
(202) 263-3000  
wstallings@mayerbrown.com

*Counsel for Indiana Packers Corporation*

/s/ Donald G. Heeman

Donald G. Heeman (#0286023)  
Jessica J. Nelson (#0347358)  
Randi J. Winter (#0391354)  
SPENCER FANE LLP  
150 South Fifth Street, Suite 1900  
Minneapolis, MN 55402  
(612) 268-7000  
dheeman@spencerfane.com  
jnelson@spencerfane.com  
rwinter@spencerfane.com

Stephen R. Neuwirth (*pro hac vice*)  
Michael B. Carlinsky (*pro hac vice*)  
Sami H. Rashid (*pro hac vice*)  
Richard T. Vagas (*pro hac vice*)  
Robert P. Vance, Jr. (*pro hac vice*)  
QUINN EMANUEL URQUHART &  
SULLIVAN, LLP  
51 Madison Avenue, 22nd Floor  
New York, NY 10010  
(212) 849-7000  
stephenneuirth@quinnemanuel.com

2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402-3901  
(612) 766-7000  
richard.duncan@faegrebd.com  
aaron.vanoort@faegrebd.com  
craig.coleman@faegrebd.com  
emily.chow@faegrebd.com  
isaac.hall@faegrebd.com  
bryan.washburn@faegrebd.com

*Counsel for Hormel Foods Corporation*

/s/ William L. Greene

William L. Greene (#0198730)  
Peter J. Schwinger (#0388909)  
Jon M. Woodruff (#0399453)  
STINSON LEONARD STREET LLP  
50 South Sixth Street, Suite 2600  
Minneapolis, MN 55402  
(612) 335-1500  
william.greene@stinson.com  
peter.schwinger@stinson.com  
john.woodruff@stinson.com

J. Nicci Warr (*pro hac vice*)  
STINSON LEONARD STREET LLP  
7700 Forsyth Blvd., Suite 1100  
St. Louis, MO 63105  
(314) 863-0800  
nicci.warr@stinson.com

*Counsel for Seaboard Foods, LLC*



michaelcarlinsky@quinnemanuel.com  
samirashid@quinnemanuel.com  
richardvagas@quinnemanuel.com  
bobbyvance@quinnemanuel.com

*Counsel for JBS USA Food Company*

/s/ John A. Cotter

John A. Cotter (#0134296)  
John A. Kvinge (#0392303)  
LARKIN HOFFMAN DALY &  
LINDGREN LTD.  
8300 Norman Center Drive, Suite 1000  
Minneapolis, MN 55427-1060  
(952) 835-3800  
jcotter@larkinhoffman.com  
jkvinge@larkinhoffman.com

Richard Parker (*pro hac vice*)  
Josh Lipton (*pro hac vice*)  
GIBSON, DUNN & CRUTCHER, LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5306  
(202) 955-8500  
rparker@gibsondunn.com  
jlipton@gibsondunn.com

Brian Robison (*pro hac vice*)  
GIBSON, DUNN & CRUTCHER, LLP  
2100 McKinney Avenue, Suite 1100  
Dallas, TX 75201-6912  
(214) 698-3370  
brobison@gibsondunn.com

*Counsel for Smithfield Foods, Inc.*

/s/ Aaron Chapin

Aaron Chapin (#06292540)  
HUSCH BLACKWELL LLP  
120 South Riverside Plaza, Suite 2200  
Chicago, IL 60606  
(312) 655-1500  
aaron.chapin@huschblackwell.com

Gene Summerlin (*pro hac vice*)  
Marnie Jensen (*pro hac vice*)  
Ryann Glenn (*pro hac vice*)  
Kamron Hasan (*pro hac vice*)  
Quinn Eaton (*pro hac vice*)  
Sierra Faler (*pro hac vice*)  
HUSCH BLACKWELL LLP  
13330 California St., Suite 200  
Omaha, NE 68154  
(402) 964-5000  
gene.summerlin@huschblackwell.com  
marnie.jensen@huschblackwell.com  
ryann.glenn@huschblackwell.com  
kamron.hasan@huschblackwell.com  
quinn.eaton@huschblackwell.com  
sierra.faler@huschblackwell.com

*Counsel for Triumph Foods, LLC*

*/s/ David P. Graham*

---

David P. Graham (#0185462)  
DYKEMA GOSSETT PLLC  
4000 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402  
(612) 486-1521  
dgraham@dykema.com

Jetta Sandin (*pro hac vice*)  
Rachel J. Adcox (*pro hac vice*)  
Tiffany Rider Rohrbaugh (*pro hac vice*)  
AXINN, VELTROP & HARKRIDER  
LLP  
950 F Street, N.W.  
Washington, D.C. 20004  
(202) 912-4700  
jsandin@axinn.com  
adcox@axinn.com  
trider@axinn.com

*Counsel for Tyson Foods, Inc., Tyson  
Prepared Foods, Inc. and Tyson Fresh  
Meats, Inc.*

*/s/ Peter H Walsh*

---

Peter H. Walsh (#0388672)  
HOGAN LOVELLS US LLP  
80 South Eighth Street, Suite 1225  
Minneapolis, MN 55402  
T. (612) 402-3000  
F. (612) 402-3001  
peter.walsh@hoganlovells.com

William L. Monts (*pro hac vice*)  
Justin W. Bernick (*pro hac vice*)  
Jennifer A. Fleury (*pro hac vice*)  
HOGAN LOVELLS US LLP  
Columbia Square  
555 Thirteenth Street, NW  
Washington, D.C. 20004  
(202) 637-5600  
william.monts@hoganlovells.com  
justin.bernick@hoganlovells.com  
jennifer.fleury@hoganlovells.com

*Counsel for Agri Stats., Inc*